

## §9701.613

a copy of the record upon the employee's request or the request of the Merit Systems Protection Board or the MRP.

### NATIONAL SECURITY

## §9701.613 Suspension and removal.

(a) Notwithstanding other provisions of law or regulation, the Secretary may suspend an employee without pay when she or he considers suspension in the interests of national security. To the extent that the Secretary determines that the interests of national security permit, the suspended employee must be notified of the reasons for the suspension. Within 30 days after the notification, the suspended employee is entitled to submit to the official designated by the Secretary statements or affidavits to show why he or she should be restored to duty.

(b) Subject to paragraph (c) of this section, the Secretary may remove an employee suspended under this section when, after investigation and review as the Secretary considers necessary, the Secretary determines that removal is necessary or advisable in the interests of national security. The determination of the Secretary is final.

(c) An employee suspended under this section who has a permanent or indefinite appointment, has completed his or her initial service period, probationary period, or trial period, and is a citizen of the United States is entitled, after suspension and before removal, to—

(1) A written statement of the charges against the employee within 30 days after suspension, which may be amended within 30 days thereafter, and which must be stated as specifically as security considerations permit;

(2) An opportunity within 30 days thereafter, plus an additional 30 days if the charges are amended, to answer the charges and submit affidavits;

(3) A hearing, at the request of the employee, by a Department authority duly constituted for this purpose;

(4) A review of his or her case by the Secretary or designee, before a decision adverse to the employee is made final; and

(5) A written decision from the Secretary.

## 5 CFR Ch. XCVII (1–1–06 Edition)

### SAVINGS PROVISION

## §9701.614 Savings provision.

This subpart does not apply to adverse actions proposed prior to the date of an affected employee's coverage under this subpart.

## Subpart G—Appeals

## §9701.701 Purpose.

This subpart contains the regulations implementing the provisions of 5 U.S.C. 9701(a) through (c) and (f) concerning the Department's appeals system for certain adverse actions covered under subpart F of this part. These provisions require that the new appeals regulations provide Department employees fair treatment, are consistent with the protections of due process and, to the maximum extent practicable, provide for the expeditious handling of appeals.

## §9701.702 Waivers.

When a specified category of employees is covered by an appeals system established under this subpart, the provisions of 5 U.S.C. 7701 are waived with respect to that category of employees to the extent they are inconsistent with the provisions of this subpart. The provisions of 5 U.S.C. 7702 are modified as provided in §9701.709 to use “MSPB or MRP” wherever the terms “Merit Systems Protection Board” or “Board” occur. The appellate procedures specified herein supersede those of MSPB to the extent MSPB regulations are inconsistent with this subpart. MSPB must follow the provisions in this subpart until conforming regulations are issued by MSPB.

## §9701.703 Definitions.

In this subpart:

*Adjudicating official* means an administrative law judge, administrative judge, or other employee designated by MSPB to decide an appeal.

*Day* means calendar day.

*Harmful error* means error by the Department in the application of its procedures that is likely to have caused it to reach a conclusion different from the one it would have reached in the absence or cure of the error. The burden is on the appellant to show that the error was harmful, i.e., that it